

## § 7.31

but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with any other agency or DOT operating element having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

### Subpart D—Publication in Federal Register

#### § 7.31 Applicability.

This subpart implements section 552(a)(1) of title 5, United States Code, and prescribes rules governing the publication in the FEDERAL REGISTER of the following:

(a) Descriptions of the organization of the Department, including its operating elements and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or requests or obtain decisions;

(b) Statements of the general course and methods by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the Department; and

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

## 49 CFR Subtitle A (10–1–96 Edition)

#### § 7.33 Publication required.

(a) *General.* The material described in § 7.31 shall be published in the FEDERAL REGISTER. For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the FEDERAL REGISTER if it has been incorporated by reference therein with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that a person has actual and timely notice of the terms thereof, no person may in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the FEDERAL REGISTER, but not so published.

### Subpart E—Availability of Opinions, Orders, Staff Manuals, Statements of Policy and Interpretations: Indices

#### § 7.41 Applicability.

(a) This subpart implements section 552(a)(2) of title 5, United States Code. It prescribes the rules governing the availability, for public inspection and copying, of the following:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under the authority of the Department, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines and procedures for Departmental

inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes. Indices of materials listed in this paragraph shall be maintained as specified in appendices A–J of this part.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.45, may not be cited, relied on, or used as precedent by the Department to adversely affect any member of the public unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of that material.

(c) This subpart does not apply to material that is published in the FEDERAL REGISTER or is covered by subpart G of this part.

#### **§ 7.43 Deletion of identifying detail.**

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details shall be deleted from any record covered by subpart E of this part that is published or made available for inspection. A full explanation of the justification for the deletion shall accompany the record published or made available for inspection.

#### **§ 7.45 Access to materials and indices.**

(a) Except as provided in paragraph (b) of this section, material listed in § 7.41(a) shall be made available for inspection and copying by any member of the public at document inspection facilities of the Department. The index of materials available at each facility shall be published in the FEDERAL REGISTER quarterly and shall also be located at the facility. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the operating element of which it is a part.

(b) The material listed in § 7.41(a) that is published and offered for sale shall be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection

at any document inspection facility maintained by the Office of the Secretary or an operating element, whichever is concerned.

#### **§ 7.47 Index of public materials.**

The index of material subject to public inspection and copying under this subpart shall cover all material issued, adopted, or promulgated after July 4, 1967; however, earlier material may be included in the index to the extent practicable. Each index shall contain instructions on how to use it.

#### **§ 7.49 Copies.**

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the office indicated in § 7.53. Copies will be certified upon request and payment of the fee prescribed in § 7.95(f).

### **Subpart F—Availability of Reasonably Described Records**

#### **§ 7.51 Applicability.**

This subpart implements section 552(a)(3) of title 5, United States Code, and prescribes the regulations governing public inspection and copying of reasonably described records.

#### **§ 7.53 Public availability of records.**

(a) Each person desiring access to or a copy of a record covered by this subpart shall comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request should indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent should be prominently marked: “FOIA.”

(4) The request should be addressed to the appropriate office as set forth in paragraph (c) of this section.

(b) If the requirements of paragraph (a) of this section are not met, treatment of the request will be at the discretion of the agency. The ten-day time limit described in § 7.21 shall not start to run until the request has been identified, or would have been identified with the exercise of due diligence,